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# SECTION 24 OF THE RIGHT TO INFORMATION ACT, 2005

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Sincerely,

Ankur Mishra.

## Index

<b>S.No.</b>	<b>Contents</b>	<b>Page</b>
1.	Abstract	3
2.	Introduction	4
3.	Section 24 of the Act	6
4.	Who is exempted?	8
5.	Exceptions to Exemptions a. No blanket exemption b. Allegations of corruption and human rights violation c. Complete disclosure of information d. Partial disclosure of information e. No exemption from appointment of PIO and FAA	10
6.	Who can include and exclude organisations?	13
7.	Conclusion	14

## **Abstract**

The Right to Information act came into force on the 12<sup>th</sup> of October, 2005; nearly three centuries after the first such law came into force in Sweden. But as the saying goes,

*“It’s better to be late than never”*

Thus, the Right to Information Act included India in the league of nations which provide their citizens the right to seek information from various public authorities in order to promote transparency and accountability in the working of every public authority. Recognizing someone’s right to information is to uphold the motto of true democracy.

However, the Right to Information Act in India comes with certain exemptions. This paper will be discussing and analysing one such exemption provided under section 24 of the Act. This section exempts intelligence and security organisations of the country from disclosing information under the RTI act. In this paper, the author will examine the provision thoroughly, explaining the need behind such a section while elucidating on its intricacies, and arrive at a conclusion as regards to the significance of this section. The author will also try to the best of his capabilities to provide necessary amendments in the implementation of this section that might make the legislation more transparent in nature.

## Introduction

Article 19 of the Universal Declaration of Human Rights, adopted by the United Nations in 1948, assures everyone the right to seek, receive and impart information and ideas through any media and regardless of frontiers.<sup>1</sup> Sweden was the first country in the world to adopt a law in 1766 which gave its citizens the right to seek information from public authorities. The next law was adopted by Finland, after nearly 2 centuries, in 1951.<sup>2</sup> The importance of the right to information is explained appropriately by Lord Steyn in the case of *R. v. Secretary of State for the Home Department Ex P. Simms*<sup>3</sup>:

*“...The free flow of information and ideas informs political debate. It is a safety valve; people are more ready to accept decisions that go against them if they can in principle seek to influence them. It acts as a brake on the abuse of power by public officials. It facilitates the exposure of errors in the governance and administration of our country...”*

In the Indian context, the Hon'ble Supreme Court, vide its observations in numerous cases such as **Bennett Coleman & Co. and Ors. v. Union of India & Ors.**<sup>4</sup>, **State of U.P. v. Raj Narain**<sup>5</sup>, **L.K. Koolwal v. State of Rajasthan & Ors.**<sup>6</sup>, etc., has contributed immensely in the inclusion of Right to Information under Article 19 (1)(a) of the Constitution of India. However, the mainstream campaign for Right to Information began in 1994 with the Mazdoor Kisan Shakti Sansthan demanding for information concerning development works in Rural Rajasthan<sup>7</sup>. This led the Government of India to set up a working group on right to information and promotion of open and transparent government in 1997.<sup>8</sup> Subsequently, the Freedom of Information Act came into force in 2002 but was proven to be deficient due to numerous reasons such as its limited scope which excluded the private bodies from coverage, the plethora of exemptions, the failure to override these exemptions in matters of public interest, the absence of an effective independent appeals mechanism and the failure to include public education and monitoring provisions.<sup>9</sup> Ultimately, the Freedom of Information Act was set aside and in 2005, the government passed the Right to Information Act, allowing the citizens of India, to seek information from public

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<sup>1</sup> UDHR, Article 19

<sup>2</sup> Mendel, T. (2014). Right to Information RECENT SPREAD OF RTI LEGISLATION. [online] Available at: <http://siteresources.worldbank.org/PUBLICSECTORANDGOVERNANCE/Resources/285741-1343934891414/8787489-1344020463266/8788935-1399321576201/Recent-Spread-of-RTI-Legislation.pdf> [Accessed 16 Jan. 2019].

<sup>3</sup> (2002) 2 LR 115 (AC)

<sup>4</sup> 1973 AIR 106

<sup>5</sup> 1975 AIR 865

<sup>6</sup> AIR 1988 Raj 2

<sup>7</sup> Humanrightsinitiative.org. (2019). *National Level RTI*. [online] Available at: <http://www.humanrightsinitiative.org/content/national-level-rti> [Accessed 15 Jan. 2019].

<sup>8</sup> Mathur, Kuldeep (2008). *From Government to Governance: A Brief Survey of the Indian Experience*. National Book Trust, India. ISBN 9788123754109.

<sup>9</sup> Human Rights Initiative. (2019). [online] Available at: [http://www.humanrightsinitiative.org/programs/ai/rti/news/india\\_foi\\_act\\_analysis\\_for\\_mps.pdf](http://www.humanrightsinitiative.org/programs/ai/rti/news/india_foi_act_analysis_for_mps.pdf) [Accessed 15 Jan. 2019].

bodies and rightfully so, since India is a democratic nation and following the Lincoln's definition of democracy and keeping the text of the Preamble of our sacred Constitution in mind which begins with "We the people of India..." and ends with "...give to ourselves this Constitution.", allowing citizens to seek information and question public authorities becomes of paramount importance to hold governments more accountable for their performance. The public has a fundamental right to know what the government has been doing in its name<sup>10</sup>.

The basic purpose and the main objective behind formulating the Right to Information Act is to involve the citizens into governmental function and administration, promote transparency, inhibiting accountability in the working of the government, put an end to corruption, and strengthen the institution of democracy. However, the RTI Act comes with certain exceptions and exemptions. Most of these exemptions are covered under section 8 (1) of the act. Yet, there exists section 24 which exempts several organisations from disclosing information, thus promoting non-transparent functioning of various public institutions.

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<sup>10</sup>Regina v. Shayler, (2003) 1 AC 247

## Section 24 of the Act

*“Act not to apply to certain organizations—*

- 1. Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government: Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section: Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in Section 7, such information shall be provided within forty-five days from the date of the receipt of request.*
- 2. The Central Government may, by notification in the Official Gazette, amend the Schedule by including therein any other intelligence or security organisation established by that Government or omitting therefrom any organisation already specified therein and on the publication of such notification, such organisation shall be deemed to be included in or, as the case may be, omitted from the Schedule.*
- 3. Every notification issued under sub-section (2) shall be laid before each House of Parliament.*
- 4. Nothing contained in this Act shall apply to such intelligence and security organisations, being organisations established by the State Government, as that Government may, from time to time, by notification in the Official Gazette, specify: Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section: Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the State Information Commission and, notwithstanding anything contained in Section 7, such information shall be provided within forty-five days from the date of the receipt of request.*
- 5. Every notification issued under sub-section (4) shall be laid before the State Legislature.”<sup>11</sup>*

Section 24 of the RTI Act is one of the most disputed yet important sections of the Right to Information Act, 2005. It exempts intelligence and security organisations from the purview of the Act and hence, puts a bar on the amount of transparency in the government and several public authorities and by extension, a bar on democracy itself. It appears that as of late, it has become a prestige issue for organisations to be included in the list of exempted institutions. The biggest reason why organisation want to exempt themselves under section 24 is that unlike section 8, wherein public interest can be kept ahead of the interest of the withheld information,

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<sup>11</sup>Section 24 of RTI Act, 2005

section 24 provides almost absolute exemption. In other words, there arises no question of public interest when taken recourse under section 24. These organisations are also exempted from proactive disclosure of their administration under section 4 (1) of the Act. Thankfully, these organisations still have a duty to disclose information in case there is an allegation of human rights violation or of corruption.

## **Who is exempted?**

The 2<sup>nd</sup> schedule of the Right to Information Act, 2005 provides a comprehensive list of 26 organisations which are exempted from providing information on the grounds of them being intelligence and security organisations. The Central government has the authority to amend the 2<sup>nd</sup> schedule from time to time, thereby adding, removing or substituting organisations present in the said schedule. The state government has a similar authority and is authorised to exempt an intelligence and security organisation by issuing a notification in the official gazette. Both the central and the state governments are required to present the said notification before their respective legislatures.

The organisations currently exempted under section 24 are as follows:

1. Intelligence Bureau
2. Research and Analysis Wing of Cabinet Secretariat
3. Directorate of Revenue Intelligence
4. Central Economic Intelligence Bureau
5. Directorate of Enforcement
6. Narcotics Control Bureau
7. Aviation Research Centre of the Cabinet Secretariat<sup>12</sup>
8. Special Frontier Force of the Cabinet Secretariat<sup>13</sup>
9. Border Security Force
10. Central Reserve Police Force
11. Indo-Tibetan Border Police
12. Central Industrial Security Force
13. National Security Guards
14. Assam Rifles
15. Sashastra Seema Bal<sup>14</sup>
16. Directorate General of Income – Tax (Investigation)<sup>15</sup>
17. National Technical Research Organisation<sup>16</sup>
18. Financial Intelligence Unit, India<sup>17</sup>
19. Special Protection Group<sup>18</sup>
20. Defence Research and Development Organisation
21. Border Road Development Board
22. National Security Council Secretariat<sup>19</sup>

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<sup>12</sup> Substituted by G.S.R. 530(E) dated 21-7-2014

<sup>13</sup> Ibid.

<sup>14</sup> Substituted by G.S.R. 347 dated 28-9-2005

<sup>15</sup> Substituted by G.S.R. 235(E) dated 27-3-2008

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Inserted by G.S.R. 347 dated 28-9-2005

<sup>19</sup> Added by G.S.R. 726(E) dated 8-10-2008

23. Central Bureau of Investigation<sup>20</sup>
24. National Investigation Agency
25. National Intelligence Grid
26. Strategic Forces Command.<sup>21</sup>

It can be seen that the second schedule has been amended multiple times. When the Act came into force, there were controversies on whether the armed forces, specifically the Army, Navy and the Air Force were exempted under section 24. Although some paramilitary organisations such as the Border Security Force, Indo-Tibetan Border Police, Central Reserve Police Force, etc. are exempted from the said section, the armed forces, to this day, stand non-exempted. There was another huge controversy when the Central Bureau of Investigation was added to the list of exempted organisations. In the case of **S. Vijayalaxmi v. Union of India**<sup>22</sup>, before the Hon'ble High Court of Madras, the petitioner challenged the inclusion of CBI in the 2<sup>nd</sup> schedule. It was contended that in light of the ongoing scams, the government instead of becoming more transparent, was taking reclus under section 24 of the Act. It was further contended that all the sensitive information pertaining to the functions of CBI was already exempted under section 8 (1) of the act and its inclusion to the 2<sup>nd</sup> schedule will give rise to more suspicion and plethora of petitions challenging such inclusion. The Hon'ble High Court opined that

*“...there is a vital distinction between the exemption from disclosure of information contemplated under [section 8\(1\)](#) of the Act to that of the exemption of the organisation themselves and the information furnished by them to the Government under [section 24\(1\)](#) of the Act. Therefore, these two provisions are exclusive of each other and one cannot substitute for the other.”*

The court, however, failed to elucidate on this ‘vital distinction’ between section 8 and section 24 of the Act and therefore failed to convince RTI activists across the country.

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<sup>20</sup> Added by G.S.R. 442(E) dated 9-6-2011

<sup>21</sup> Added by G.S.R. 637(E) dated 8-7-2016

<sup>22</sup> W.P.No.14788 of 2011 & M.P.No.1 of 2011

## Exceptions to Exemptions

Now, the question arises as to what is the limit up to which an intelligence organisation can seek exemption from disclosing information. Section 24 (1) of the Act specifies it clearly that the provision of the RTI Act will not apply to Intelligence and Security organisation except in cases of alleged Human rights violation and/or Corruption.

### ***No Blanket Exemption***

It is to be noted that there is no blanket exemption provided to these intelligence organisations. In other words, these organisations can't hide behind the purview of section 24 of the RTI Act whenever they receive an RTI application. These organisations are exempted from disclosing information only in case the sought information is of such a nature, that it puts the security of the country at stake. In the case of **First Appellate Authority, Additional DGP, CID of Haryana v CIC**<sup>23</sup>, Hon'ble Justice Mehinder Singh Sullur stated that any sought information not concerning the security and intelligence of the state may be given. Justice Sullur said:

*“A combined reading of these provisions would reveal, only that information is exempted, which is directly effecting and co-related to the “Intelligence” and “Security” of that organization of the State and not otherwise.”*

In the case of **Harinder Singh vs. State Information Commission, Punjab & Ors.**<sup>24</sup>, the Appellant had sought information pertaining to the recruitment procedure in the Punjab Armed forces and was declined the same as per the notification issued by the state government on 23.02.2006 which brought Punjab Armed Forces out of the purview of the RTI Act, 2005. The State Information Commission had complied with this notification and refused information sought by the appellant. However, the Hon'ble High Court of Punjab and Haryana, vide its order, directed the respondents to furnish the sought information as it was with regards to the recruitment and is not exempted from disclosure.

Another important judgement was delivered in the case of **Abid Hussain v State of Manipur**<sup>25</sup>, wherein the Appellant had sought information regarding the recruitment procedure of Sub-Inspector of police. The police department of the government of Manipur is exempted under section 24 of the act and no allegation of Corruption or Human rights violation had been made by the Appellant. The Hon'ble High Court held that if any information doesn't form part of the core activity of an exempted organisation, it is exempted from the purview of section 24 of the Act and can hence be released.

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<sup>23</sup> CWP No. 12904/2009

<sup>24</sup> WP(C) No. 22229 of 2011, P&H High Court

<sup>25</sup> W.P. (C) No. 880 of 2014

In another case of **The Superintendent of Police vs. M. Kannappan & Anr.**<sup>26</sup>, the Respondent had sought for the manual of the Directorate of Vigilance and Anti-Corruption. Both the State Information Commission, Madras and the Hon'ble High Court of Madras opined that the manual was to be considered as 'information' under section 2 (f) of the RTI Act, 2005 and should be made available to the Respondent since it was not a secret document but just a set of rules as to how the DVAC is functioning.

### ***Allegation of Corruption & Human Rights Violation***

If an Appellant seeks information from these intelligence organisations, alleging corruption or human rights violation, these organisations are bound to provide such information. However, it is essential that the said allegations are backed by some substantial proof instead of mere surmises and conjectures. The author, in his time as an intern at the CIC, witnessed several appeals get dismissed due to the Appellant not being able to provide substantial proof behind their allegations. One such case was of **Dr. Nutan Thakur vs. Directorate of Enforcement**<sup>27</sup>, wherein the Appellant had filed an RTI application, seeking information regarding several articles published in various newspapers as regards to the Punjab National Bank scam. She contended that ED officials were selectively furnishing information to the newspapers in question through leakages whereas the information sought by the RTI applicant was being denied citing Section 24 of the RTI Act, 2005. However, she was unable to prove her allegations and the CIC noted that the newspaper reports were not strong enough grounds to sustain the application and hence the appeal was disposed off.

Similarly, in **Prayag Kumar vs. Aeronautical Development Establishment**<sup>28</sup>, wherein the Appellant had sought information regarding certain appointments in the Defence Research Development Organisation (DRDO) alleging corruption. The CIC, vide its order dated 20.2.2008, stated that DRDO is exempted under section 24 (1) read with S.No. 20 of the RTI Act, 2005 except in cases of corruption or human rights violation. In the instant case, the Appellant had not specified as to in what manner there had been corruption. The Commission, therefore, concluded that the plea of corruption had been taken in order to circumvent exemption provided to DRDO and hence dismissed the appeal.

*“As intimated to the complainant by the PIO, DRDO is an organization listed at S. No. 20 in the second schedule vide notification No. 347 of 28th September 2005, gazetted on Oct 8,2005. Therefore, u/s 24(1) this organization is exempt from application of this Act, except in cases of corruption and human rights violation. In this case the question of corruption has indeed been raised at the level of complaint before us. But it has not been specified in what manner there has been alleged corruption. Under the circumstances we can only conclude that the plea of*

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<sup>26</sup>WP(C) No. 805 of 2012, Madras HC

<sup>27</sup>CIC/DIREN/A/2018/142919

<sup>28</sup>CIC/WB/C/2007/00364

*corruption has been taken to seek to circumvent exemption provided to DRDO under the Act, which is unacceptable.*

*In fact, the PIO, DRDO has offered considerable information to appellant Shri Prayag Kumar without being obliged to do so. Since this has been provided of his own volition by CPIO in an area not covered under the RTI Act 2005, we have no decision to take in this matter.”<sup>29</sup>*

However, in **Harinder Singh vs. State Information Commission, Punjab & Ors.**<sup>30</sup>, the Hon’ble High Court of Punjab and Haryana reiterated that the term ‘allegation of corruption’ must be looked broadly and understood in a wide sense.

### ***Complete Disclosure of Information***

On the other hand, there have been cases where the CIC/ Courts have allowed complete disclosure of information as there was enough backing behind the contended allegations and there was prima facie evidence to prove such contentions. One such landmark judgement is of **Sanjiv Chaturvedi vs. Ministry of Environment & Forests and Intelligence Bureau**<sup>31</sup>, wherein the Appellant had demanded for an IB report in lieu of the harassment faced by him and caused by the corrupt officers he had exposed in his time as DFO in Haryana. It was contended that the respondent was harassed through suspension, major penalty, departmental charge sheet, police and vigilance cases and 12 transfers in just five years. The question which arose in this case was whether the exception carved out by the proviso to Section 24 would apply only if the allegations of corruption/ human rights violations were with regard to the Intelligence Bureau itself or pertaining to an Officer of the Intelligence Bureau? The CIC, vide its order dated 21.04.2016, observed that the IB report sought by the Appellant was to be considered as information under section 2(f) of the Right to Information Act and also information pertaining to allegation of corruption and human rights violation and directed the concerned authorities to provide the Appellant with the sought report. The decision was challenged by the CPIO, IB in the Hon’ble High Court of Delhi wherein the High Court concurred with the CIC’s judgement.

### ***Partial Disclosure of Information***

There have also been instances where the CIC has allowed partial disclosure of information. Such a situation takes place when the sought information consists of both confidential information as well as information which is not going to harm the functioning of the intelligence organisation, if released in public. For example, in the case of **Navin Prakash Gupta vs. Director, C-Tech, DRDO**<sup>32</sup>, the Appellant sought information on 05 points inter alia regarding the number of officers staying in Raksha Vihar colony of Gwalior and a certified copy of site map of that very colony. The CIC opined that the Appellant was entitled to get information on

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<sup>29</sup>Supra 25

<sup>30</sup>Supra 23

<sup>31</sup>W.P.(C) 5521/2016 & CM No.23078/2016

<sup>32</sup>CIC/AT/C/2006/00131

the former but information could not be furnished on the latter as in case of the former, there could not be drawn a direct nexus between the sought information and the security of the nation, whereas in the case of the latter, information could not be disclosed as it was related to the strategic interest of the country. Following this logic, the Commission allowed the disclosure on 2 points and restricted the information on the remaining 3.

***No exemption from appointment of PIO and FAA***

A significant decision in the case of **Nabarun Mazumdar vs. National Technology Research Organisation**<sup>33</sup> is also to be noted at this point, wherein the CIC held that even if a public authority had applied for inclusion of itself in the list of exempted institutions under the 2<sup>nd</sup> schedule of the RTI Act, it doesn't exempt it from appointing a Central Public Information Officer and Appellate Authority because as per section 24 (1) of the Act, even the intelligence organisations are not exempted from disclosing information in cases relating to allegations of corruption and human rights violation.

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<sup>33</sup>CIC/WB/C/2006/00221

## **Who can include and exclude organisations in the list of exemptions?**

The sections 24 (2) and 24 (4) provide the answer to this question. The central government has the authority to amend the second schedule so as to add, delete or substitute organisations under section 24 (2) of the act by issuing a notification in the official gazette.

A similar provision is provided to the state legislature under section 24 (4) of the Act. It states that the state government is authorised to establish security and intelligence organisations and notifying about it in their official gazette.

Sections 24 (3) and 24 (5) of the act require both the central and the state governments to place the notifications before their respective houses of parliament. Such a provision is necessary so that the Parliament may examine the appropriateness of the government's action in deleting or adding new organisations to the list of exempted organisations.

The Supreme Court judgement in the case of **Chief Information Commissioner and anr. Vs. State of Manipur and anr.**<sup>34</sup> is also to be noted at this point wherein it was stated that a state government cannot issue notifications, retrospectively exempting an organisation under section 24 of the RTI act after it has been asked to disclose certain information. Such retrospective application is prohibited under the RTI Act.

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<sup>34</sup>2012(1) KarLJ629

## Conclusion

Section 24 of the Right to Information Act, 2005 act faced heavy criticism when the Act was being publicly discussed. Right to Information Act is supposed to promote transparency in the functioning of the government and more involvement of the general public in the matters of administration and better functioning of the public authorities. It is only when the people know how the government is functioning, they can fulfil the role which democracy assigned to them and make democracy really a participatory democracy.<sup>35</sup> However, section 24 does completely opposite of that. It creates prejudices and suspicions in the minds of general public as regards the undisclosed information. As aforementioned, organisations, nowadays, have made it a question of reputation to include themselves in the list of exempted organisations. It is understood that the intelligence organisation cannot disclose sensitive and confidential information as it may put the security and strategies of the nation state in jeopardy. However, it is also to be noted that all such information is already protected by the stringent exemptions under section 8 (1) of the Right to Information act. Sections 8 (1) (d)<sup>36</sup>, (g)<sup>37</sup>, (h)<sup>38</sup> and (j)<sup>39</sup> cover all risks of actual harm. The main clause which differentiates section 24 from section 8 is the sub clause (2) of section 8 which states that:

*“Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with sub-section (1), the public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.”<sup>40</sup>*

No such clause keeping public interest ahead of the protected secret is present in section 24 of the Act. That’s the very reason why organisations are bent on getting themselves included in the list of exempted institutions. However, it is to be noted that the Right to Information Act is a benevolent and public interest driven piece of legislature. It is supposed to promote transparency and thereby strengthening the institution of democracy as a whole. In fact, one of the biggest reasons behind the failure of the Freedom of Information Act, 2002 was that it did nothing to promote public interest and inhibited several exemptions. Even today, it is seen that these public authorities, rather than facilitating the seeker in getting the sought information, create a protectionist attitude and create obstructions in disclosing even the most non-sensitive information. It has been rightfully stated in **Harinder Singh vs. State Information**

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<sup>35</sup> AIR 2012 Mad 84

<sup>36</sup> Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third part, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information

<sup>37</sup> Information, the disclosure of which would endanger the life or physical safety of any person or identity the source of information or assistance given in confidence for law enforcement or security purposes

<sup>38</sup> Information which would impede the process of investigation or apprehension or prosecution of offenders

<sup>39</sup> Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the CPIO, SPIO or appellate authority is satisfies that the larger public interest justified the disclosure of such information.

<sup>40</sup>Section 8 (2) of Right to Information act, 2005.

**Commission, Punjab & Ors.**<sup>41</sup> of the Punjab and Haryana High Court that if an organization has nothing to hide or to cover a corrupt practice, the information should be made available. The information sought may help in dispelling favouritism, nepotism or arbitrariness. Such information is necessary for establishing the transparent administration. This would not only provide the seekers with more information, but also reduce the amount of suspicion and litigation.

Therefore, the author hereby provides a few actions which might bring a more transparent administration:

1. The question on whether section 24 of the Right to Information Act, 2005 is actually necessary should be raised by the lawmakers. A deliberation shall be made by the political parties as to why section 24 is even needed when there is already a section as comprehensive as section 8 (1)
2. It is also witnessed that organisations with a certain part of it exempted under section 24 of the Act often attribute all sensitive information to this part, thereby disallowing any access through RTI applications. In such cases, the Hon'ble Commission may take on itself to issue orders for disclosure of information on a case to case basis.
3. All information other than that concerning the security of the nation must be uploaded on the websites of all the exempted organisations so as to create more transparency and reduce the number of RTI applications.
4. The burden of proof to be laid on the exempted organisations in certain cases to prove how disclosing certain information will affect the security of the state.

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<sup>41</sup>Supra 23